

EXHIBIT A

12-Person Jury

Return Date: No return date scheduled
Hearing Date: 7/23/2021 10:00 AM - 10:00 AM
Courtroom Number: 2510
Location: District 1 Court
Cook County, IL

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

FILED
3/25/2021 10:41 AM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH01421
12709787

JOHN DOE, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

ILLINOIS INSTITUTE OF TECHNOLOGY,

Defendant.

Case No. **2021CH01421**

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff John Doe ("Plaintiff") brings this action on behalf of himself and all others similarly situated against Defendant Illinois Institute of Technology and its present, former, or future direct and indirect parent companies, subsidiaries, affiliates, agents, and/or other related entities ("Illinois Tech" or "Defendant") and alleges as follows:

INTRODUCTION

1. Defendant Illinois Institute of Technology is a private research university with its main campus in Chicago, Illinois. Illinois Tech offers undergraduate and graduate programs to more than 6,000 students both in person on its campuses and through distance and online learning programs.

2. In offering online courses to its students, Illinois Tech requires that many student exams be conducted using an online remote proctoring tool called Respondus Monitor. Through the Respondus Monitor tool, Illinois Tech unlawfully collects, uses, and discloses students' biometric identifiers and biometric information without the students' written and informed consent. Illinois Tech also lacks a legally-compliant written public policy establishing a retention schedule and guidelines for destroying biometric identifiers and biometric information and fails to comply with such policy.

3. Illinois Tech’s chosen and exclusive remote proctoring tool, Respondus Monitor, captures, uses, and stores vast amounts of data, including facial-recognition data, facial detection data, recorded patterns of keystrokes, eye monitoring data, gaze monitoring data, and camera and microphone recordings to effectively surveil students taking online exams. Illinois Tech owns, has access to, and possesses this data.

4. Through Respondus Monitor, Illinois Tech collects, captures, and stores everything from a student’s facial features to their voice through a web portal accessed through the student’s personal device. Using the Respondus Monitor tool, Illinois Tech is able to collect and aggregate information on all aspects of a student’s life. Indeed, as one director of academic testing told the *Washington Post*, software programs like Respondus, Inc.’s are akin to “spyware.” *Mass School Closures in the Wake of the Coronavirus are Driving a New Wave of Student Surveillance*, WASHINGTON POST (Apr. 1, 2020), <https://www.washingtonpost.com/technology/2020/04/01/online-proctoring-college-exams-coronavirus/>. Likewise, an economics professor at Harvard University recently told *Forbes* that this type of technology involves an inappropriate “level of intrusion.” Sean Lawson, *Are Schools Forcing Students to Install Spyware that Invades Their Privacy as a Result of the Coronavirus Lockdown?*, FORBES (Apr. 24, 2020 6:34 PM), <https://www.forbes.com/sites/seanlawson/2020/04/24/are-schools-forcing-students-to-install-spyware-that-invades-their-privacy-as-a-result-of-the-coronavirus-lockdown/#c2d2e18638d8>. Relatedly, Duke University has decided not to allow virtual proctoring at this time, in part because of security concerns. *Id.*

5. All the while, students are left in the dark about the vast amount of information their university collects through the Respondus Monitor tool. Illinois Tech does not disclose or

obtain written consent before collecting, capturing, storing, or disseminating users' biometric data. Illinois Tech also fails to disclose what it does with that biometric data after collection and does not comply with BIPA's retention and destruction requirements for private entities that possess biometric identifiers and biometric information.

6. It is, therefore, no surprise that there is an outcry among students and faculty about the use of online proctoring software and services. Petitions have sprung up across college campuses nationwide demanding a ban on online proctoring. At major universities, such as the University of Texas at Dallas, California State University Fullerton, the University of Miami, Florida State University, Auburn University, the University of Wisconsin–Madison, and the City University of New York, petitions have gained tens of thousands of student and faculty signatures. At the University of California Santa Barbara, the Faculty Association published a letter demanding that university administration officials rescind its contracts with online-proctoring companies amid concerns these tools could turn the university into “a surveillance tool.” *Id.*

7. Plaintiff John Doe brings this action to enforce his legal rights under Illinois' Biometric Information Privacy Act, 470 ILCS 14/ (“BIPA”), and those of the proposed class of persons he represents.

8. BIPA is designed to protect individuals against the threat of irreparable privacy harms, identity theft, and other economic injuries arising from private entities' increasing use of biometric identifiers and biometric information.

9. In enacting BIPA in 2008, the Illinois Legislature recognized that biometrics are unlike other unique identifiers because they are biologically unique to the individual and cannot be changed. Once compromised, the individual has no recourse. *See* 740 ILCS 14/5(c).

10. BIPA protects public welfare, security, and safety by regulating the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and biometric information. *See* 740 ILCS 14/5(g).

11. BIPA defines a biometric identifier as “a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry.” 740 ILCS 14/10.

12. BIPA defines biometric information as “any information, regardless of how it is captured, converted, stored, or shared, based on an individual’s biometric identifier used to identify an individual.” *Id.*

13. Plaintiff alleges Illinois Tech violated BIPA by, among other things, collecting, capturing, using, storing, and sharing Plaintiff’s and class members’ biometric identifiers or biometric information obtained through the use of Respondus Monitor without informed written consent.

14. Illinois Tech violated BIPA’s requirement that it maintain, disclose, and follow a retention policy that requires Illinois Tech to permanently destroy students’ biometric data obtained through the use of Respondus Monitor once the purpose for collecting such data has been satisfied.

15. Illinois Tech’s failure to follow BIPA’s express disclosure and consent requirements and failure to comply with the destruction requirements for biometric identifiers and biometric information was an invasion of Plaintiff’s personal rights and the rights of the class members he represents.

16. A class action is the best means of obtaining redress for Illinois Tech’s wide-scale BIPA violations and is consistent with the fairness and efficiency goals of class actions.

JURISDICTION AND VENUE

17. This Court has subject-matter jurisdiction over this putative class action lawsuit because it arises under Illinois law.

18. The Court has personal jurisdiction over Illinois Tech pursuant to 735 ILCS 5/2-209 because Plaintiff's claims arise out of and relate to Illinois Tech's conduct in the state of Illinois.

19. Venue is proper in this Court under 735 ILCS 5/2-101(2) because the transaction or some part thereof out of which the cause of action arose occurred in Cook County.

PARTIES

20. Plaintiff John Doe is a natural person who resides in Cook County, Illinois.

21. Defendant Illinois Institute of Technology is an Illinois not-for-profit corporation with its principal place of business located at 10 West 35th Street, Chicago, Illinois 60616.

FACTUAL BACKGROUND

A. Online and Remote Proctoring

22. During the COVID-19 pandemic, schools, colleges, universities, and other educational institutions ("Institutions") have been forced to cease in-person instruction and move to remote learning. However, even prior to the pandemic, many Institutions like Illinois Tech have offered coursework that requires students to take quizzes and exams online.

23. To facilitate remote test taking, Institutions contract with private companies that offer online exam monitoring and proctoring services.

24. One such company is Respondus, Inc., which offers several cloud-based software and service applications to assist Institutions in providing online content and exams to students.

25. Institutions, like Illinois Tech, that use Respondus, Inc.'s applications incorporate these tools into the Institution's learning management system ("LMS"). Well-known LMSs include Canvas, Blackboard Learn, Brightspace, and Moodle.

26. Illinois Tech purchases an enterprise license from Respondus, Inc. to integrate Respondus Monitor into Illinois Tech's LMS. *See* ILLINOIS INSTITUTE OF TECHNOLOGY, <https://ots.iit.edu/academic-applications/blackboard> (last visited Mar. 16, 2021).

B. The Respondus Monitor Tool

27. This lawsuit arises from Illinois Tech's use of the Respondus Monitor tool, a fully automated exam proctoring solution that enables students to take exams online in a *non-proctored* environment.

28. Dozens of colleges and universities in Illinois use the Respondus Monitor tool.

29. Respondus, Inc.'s website explains that "[a]t the heart of [the] Respondus Monitor [tool] is a powerful artificial intelligence engine, Monitor AI™, that performs a second-by-second analysis of the exam session." Monitor AI uses "facial detection, motion, and lighting to analyze the student and examination environment." RESPONDUS, <https://web.respondus.com/he/monitor/> (follow "Learn More" link in "Monitor AI is the most advanced artificial intelligence system for automated proctoring" box) (last visited Dec. 6, 2020).

30. Respondus, Inc.'s website and marketing materials acknowledge that the Respondus Monitor tool uses facial recognition technology to determine, among other things, whether the person who started the exam switches to a different person along the way. *Id.*

31. Respondus, Inc.'s website explains this "data then flows into the 'Review Priority' system to help instructors quickly evaluate the proctoring results." *Id.*

32. Review Priority is a "patent-pending method for ranking proctoring results according to the risk that violations have occurred. ... If wanted, instructors can view the data

contributing to the Review Priority result on a video timeline, such as flagged events and key milestones.” RESPONDUS, <https://web.respondus.com/he/monitor/> (follow “Learn More” link in “Review Priority ranks results by risk, helping instructors know which sessions warrant deeper scrutiny” box) (last visited Mar. 16, 2021).

33. However, prior to January 21, 2021, the terms of use that students must accept before using Respondus Monitor for Illinois Tech exams say nothing about facial recognition, biometric identifiers, or biometric information and do not disclose to student users that their biometric identifiers or biometric information will be captured, collected, analyzed, or disseminated to the student’s Institution.¹

C. Test Taking with Respondus Monitor

34. To take an exam using Respondus Monitor, a student must have a webcam.

35. The student first logs into their Institution’s LMS platform and opens a browser.

36. Next, the student is required to accept the Respondus Monitor Terms of Use for Students (the “Monitor Student Terms”) by clicking, “I accept.” Accepting the Monitor Student Terms is a condition of proceeding with the exam through Respondus Monitor.

D. The Monitor Student Terms

37. The Monitor Student Terms include two components—terms applicable to (i) the student’s relationship with Respondus, Inc.; and (ii) the student’s relationship with the Institution. A true and correct copy of the Monitor Student Terms in effect prior to January 21, 2021 is attached hereto as **Exhibit A** and was previously publicly available on Respondus, Inc.’s website.

¹ On January 21, 2021, Respondus, Inc. updated the Respondus Monitor Terms of Use for Students. All references to the Respondus Monitor Terms of Use for Students (the “Monitor Student Terms”) refer to the Monitor Student Terms in effect prior to January 21, 2021.

38. The Monitor Student Terms inform the students that “your Institution is requiring students to use Respondus Monitor for certain, or all, courses. In order to use Respondus Monitor, you must agree to these Terms in full, including this section under REQUIREMENTS OF YOUR INSTITUTION, regarding your relationship with your Institution.” (Ex. A.)

39. Next, in relevant part, the Monitor Student Terms disclose that Respondus Monitor will record student activity, both audibly and visually, during exams. (*See id.*)

40. However, prior to January 21, 2021, the Monitor Student Terms did *not* disclose that Respondus Monitor would use facial recognition technology to collect, capture, analyze, and disseminate a student’s biometric identifiers or biometric information.

41. Instead, the Monitor Student Terms cryptically stated that “other data” related to student activity during an assessment may be recorded by Respondus Monitor. The Monitor Student Terms stated that “[t]he recordings are controlled by your Institution” and will be processed by Respondus, Inc. on behalf of the Institution. (*See id.*)

42. These recordings, which the Institution controls, include students’ biometric identifiers and biometric information, but, prior to January 21, 2021, that fact was not disclosed in the Monitor Student Terms.

43. The Monitor Student Terms state that Respondus, Inc. “may analyze the recordings through automated processes to generate additional data derived from the recordings, with the additional data being associated with individual students for use by your Institution in evaluating the recordings.” (*Id.*)

44. This “additional data” that Respondus, Inc. generates includes students’ biometric identifiers and biometric information, but, prior to January 21, 2021, that fact was not disclosed in the Monitor Student Terms.

45. The Monitor Student Terms say this additional data and the original exam recordings “may be evaluated by agents of your Institution, including your instructors, to review, assess, and analyze student performance and conduct ... for the purpose of improving educational processes for students, including investigating student conduct violations.” (*Id.*)

46. This “additional data” that may be evaluated by an Institution includes students’ biometric identifiers and biometric information, but, prior to January 21, 2021, that fact was not disclosed in the Monitor Student Terms.

47. The Monitor Student Terms additionally state Respondus, Inc. works with the Institution to ensure the student’s privacy regarding the recording and to comply with applicable law as to any information or data. (*See id.*)

48. This “data” that is subject to privacy laws includes students’ biometric identifiers and biometric information, but, prior to January 21, 2021, that fact was not disclosed in the Monitor Student Terms.

49. The Monitor Student Terms state Respondus Monitor will save all recordings of students for one (1) year, but that Institutions have the ability to retain data for up to an additional four (4) years. (*See id.*)

50. The “data” an Institution can retain for up to four (4) years includes students’ biometric identifiers and biometric information, but, prior to January 21, 2021, that fact was not disclosed in the Monitor Student Terms.

51. Prior to January 21, 2021, the Monitor Student Terms did not establish a retention schedule or guidelines for permanently destroying students’ biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information

had been satisfied or within three (3) years of the student's last interaction with Respondus, Inc. or the Institution, whichever occurred first.

52. To the contrary, the Monitor Student Terms state Respondus, Inc. does not guarantee removal of "all traces of any information or data (including recordings) from the Respondus Monitor Services after deletion." (*See id.*)

53. This trace "information and data" includes students' biometric identifiers and biometric information, but, prior to January 21, 2021, that fact was not disclosed in the Monitor Student Terms.

54. Brazenly, in the Monitor Student Terms, the Institution unlawfully purports to disclaim any liability to the student for the "legality" or "availability of information or data in the Respondus Monitor Service or Software." The Monitor Student Terms also purport to disclaim any liability of the Institution to the student for harm resulting from "downloading or accessing any information or data through Respondus Monitor." (*See id.*)

E. Privacy Policies in the Monitor Student Terms

55. The Monitor Student Terms include two privacy policies—a Privacy and Security Policy (the "Monitor Privacy Policy"²), described in the Monitor Student Terms, and the "full Respondus Privacy Policy," incorporated by reference and publicly available on Respondus, Inc.'s website. *See* RESPONDUS, <https://web.respondus.com/privacy-policy/> (last visited Mar. 16, 2021) (the "Respondus Privacy Policy").

² On January 21, 2021, Respondus, Inc. updated the Monitor Privacy Policy. All references to the Monitor Privacy Policy refer to the Monitor Privacy Policy in effect prior to January 21, 2021.

F. The Monitor Privacy Policy

56. The Monitor Privacy Policy states that “Instructors, administrators and other agents of Institution” may access the *recordings and data* related to their students through Respondus Monitor. (Ex. A.)

57. The “recordings and data” that may be accessed by agents of the Institution include students’ biometric identifiers and biometric information, but, prior to January 21, 2021, that fact was not disclosed in the Monitor Privacy Policy.

58. The Monitor Privacy Policy states that samples of de-identified student video recordings may be shared with researchers, including biometric experts. (*See id.*)

59. However, prior to January 21, 2021, the Monitor Privacy Policy did not disclose that, prior to sending student video to experts for research purposes, Respondus, Inc. already captured the students’ biometric information or biometric identifiers from these recordings.

60. Prior to January 21, 2021, the Monitor Privacy Policy did not establish a retention schedule or guidelines for permanently destroying students’ biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information had been satisfied or within three (3) years of the students’ last interaction with Respondus, Inc. or the Institution, whichever occurred first.

G. The Respondus Privacy Policy

61. The Respondus Privacy Policy is incorporated by reference into the Monitor Student Terms. A true and correct copy of the Respondus Privacy Policy obtained from Respondus, Inc.’s website is attached hereto as **Exhibit B. RESPONDUS**, <https://web.respondus.com/privacy-policy/> (last visited Mar. 16, 2021).

62. The Respondus Privacy Policy does not disclose that Respondus, Inc. collects student biometric identifiers and biometric information through Respondus Monitor. (*See* Ex. B.)

63. The Respondus Privacy Policy does not establish a retention schedule and guidelines for permanently destroying students' biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within three (3) years of the student's last interaction with Respondus, Inc. or the Institution, whichever occurs first. (*See id.*)

H. Other Relevant Monitor Student Terms

64. The Monitor Student Terms state that if the student does not agree to the Monitor Student Terms, "[the student] will not be permitted to use this Service." (Ex. A.)

65. The Monitor Student Terms also provide that "[a]ll legal issues arising from or related to the use of Respondus Monitor between you and your Institution shall be construed in accordance with the laws of the state in which your Institution resides" (*Id.*)

66. The Monitor Student Terms state that students using Respondus Monitor, and thus agreeing to these terms, "consent to personal jurisdiction and venue in the state and federal courts located in and serving the county in which your Institution resides" (*Id.*)

I. The Capture of Student Biometric Identifiers and Information

67. After a student clicks to accept the Monitor Student Terms in their browser, Respondus Monitor conducts a webcam check to confirm the webcam's audio and video are working properly. In this step, Respondus Monitor requires that a student's face be centered in the camera and that the student speak into the microphone.

68. Next, Respondus Monitor's portal instructs the student to look into the webcam so it can capture an image of the student so the student's identity can be confirmed.

69. The Respondus Monitor portal may require the student to show photo identification so the software can take a picture of the photo identification before proceeding.

70. Next, the Respondus Monitor portal instructs the student to use the webcam to record a 360-degree “environment check” of the student’s test-taking surroundings. This recording is captured by the Respondus Monitor system.

71. Lastly, Respondus Monitor conducts a “facial detection check” of the student taking the exam and requires the student to look directly into the webcam.

72. During these pre-exam steps, unbeknownst to the student, Respondus Monitor captures the student’s facial geometry and other biometric identifiers.

J. The Monitor Institution Terms

73. On information and belief, Illinois Tech’s use of Respondus Monitor is subject to Terms of Use applicable to Institutions (the “Monitor Institution Terms”). A copy of these terms is attached hereto as **Exhibit C** and is publicly available on Respondus, Inc.’s website. *See* RESPONDUS, <https://web.respondus.com/tou-monitor-admin/> (last visited Mar. 16, 2021).

74. In the Monitor Institution Terms, Respondus, Inc. discloses to Illinois Tech that “Respondus Monitor analyzes the recordings of student activity as part of an automated proprietary process.” (Ex. C.)

75. Under the Monitor Institution Terms, Illinois Tech is made aware that video recordings Illinois Tech students make and send through Respondus Monitor are accessible to Illinois Tech, its instructors, administrators, and other agents of Illinois Tech. (*Id.*)

76. In the Monitor Institution Terms, Illinois Tech agrees its students’ recordings made while using Respondus Monitor may be used by Respondus, Inc. and may “be shared with researchers (research institutions and/or biometric experts) under contract with Respondus to assist in such research” (*Id.*)

77. The Monitor Institution Terms make clear that if Illinois Tech authorizes Respondus, Inc. to share student recordings or personally identifying information of any student with a third party, Respondus, Inc. will do so under the Institution's direction and control. (*Id.*)

78. The Monitor Institution Terms inform Illinois Tech that Respondus Monitor saves all recordings of students for a period of one (1) year but that Illinois Tech has the ability to retain the data for up to an additional four (4) years. (*Id.*)

79. The Monitor Institution Terms inform Illinois Tech that Respondus, Inc. "does not guarantee removal of all traces of any information or data (including recordings) from the Respondus Monitor Services after deletion." (*Id.*)

K. Illinois Tech's Student Policies

80. Illinois Tech maintains a publicly-available student handbook that includes such topics as "Privacy Rights and Access to Educational Records." See ILLINOIS INSTITUTE OF TECHNOLOGY, <https://web.iit.edu/sites/web/files/departments/onestop/pdfs/2020-2021%20Student%20Handbook%20%283%29.pdf> (last visited Mar. 10, 2021) ("Student Handbook").

81. The Student Handbook does not disclose that it collects biometric identifiers or biometric information. *Id.*

82. The Student Handbook does not include a retention or destruction policy for biometric identifiers or biometric information that Illinois Tech collects and controls. *Id.*

L. Plaintiff's Experience with Respondus Monitor

83. Plaintiff is a former student of Illinois Tech.

84. While attending Illinois Tech, Plaintiff paid tuition and other fees to Illinois Tech to take courses and receive credits toward a degree.

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85. Plaintiff was enrolled in a course at Illinois Tech in the Fall of 2020 that required the use of Respondus Monitor for exams.

86. Plaintiff used Respondus Monitor to take exams for that course.

87. Plaintiff has used Respondus Monitor at least one (1) time in the past twelve (12) months.

88. Plaintiff has not used Respondus Monitor on or after January 21, 2021.

89. Plaintiff recalls that, in using Respondus Monitor for test taking, he was required to take video footage of his surroundings and his face prior to starting the exams.

90. When agreeing to use Respondus Monitor for the exams, Plaintiff did not know Respondus Monitor would collect and analyze his biometric identifiers or biometric information prior to and during the exams.

91. When agreeing to use Respondus Monitor for his exams, Plaintiff did not give informed written consent for his biometric identifiers or biometric information to be collected, stored, used, or disseminated.

92. When agreeing to use Respondus Monitor, Plaintiff was unaware of any collection and retention policy that Illinois Tech has regarding his biometric identifiers and biometric information that Illinois Tech controls through Respondus Monitor.

93. The context in which Plaintiff was asked to accept the Monitor Student Terms—as a requirement to successfully complete a college course examination—did not give him a meaningful choice.

CLASS ALLEGATIONS

94. Plaintiff brings this action on behalf of a class of all other persons or entities similarly situated (the “Class”).

95. The Class of persons Plaintiff proposes to represent is tentatively defined as:

All persons who took an assessment using Respondus Monitor, as a student of Illinois Institute of Technology in Illinois, at any time during the five years prior to the filing of this Complaint through January 20, 2021.

96. Excluded from the Class are counsel, Illinois Tech, any entities in which Illinois Tech has a controlling interest, Illinois Tech's agents and employees, any judge to whom this action is assigned, and any member of such judge's staff and immediate family.

97. The Class defined above is identifiable through Illinois Tech's business records.

98. The potential members of the Class number, at least, in the thousands.

99. Individual joinder of these persons is impracticable.

100. Plaintiff is a member of the Class.

101. There are questions of law and fact common to Plaintiff and to the proposed Class, including, but not limited to, the following:

a. Whether Illinois Tech developed a written policy, available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information collected through Respondus Monitor, when the initial purpose for collecting such identifiers or information has been satisfied or within three (3) years of the individual's last interaction with Illinois Tech, whichever occurs first, and whether Illinois Tech complied with such written policy;

b. Whether Illinois Tech collects, captures, or otherwise obtains Plaintiff's and Class members' biometric identifiers or biometric information without:

(i) informing them in writing that a biometric identifier or biometric information is being collected and stored;

(ii) informing them in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; or

(iii) obtaining their written release;

c. Whether Illinois Tech discloses or disseminates Plaintiff's and Class members' biometric identifiers or biometric information without Plaintiff's and Class members' consent;

d. Whether Illinois Tech's conduct was negligent;

e. Whether Illinois Tech's conduct was knowing or reckless; and

f. Whether Plaintiff and Class members are entitled to damages for violation of their privacy rights.

102. Plaintiff's claims are typical of the claims of Class members.

103. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the Class, he will fairly and adequately protect the interests of the Class, and he is represented by counsel skilled and experienced in class actions.

104. Common questions of law and fact predominate over questions affecting only individual Class members, and a class action is the superior method for fair and efficient adjudication of the controversy. The only individual question concerns identification of Class members, which will be ascertainable from records maintained by Illinois Tech.

105. The likelihood that individual members of the Class will prosecute separate actions is remote due to the time and expense necessary to prosecute an individual case.

106. Plaintiff is not aware of any litigation concerning this controversy already commenced by others who meet the criteria for class membership described above.

FIRST CLAIM FOR RELIEF
Violation of 740 ILCS 14/15(a)

107. Plaintiff repeats the prior allegations of this Complaint and incorporates them by reference herein.

108. Illinois Tech is a “private entity” for purposes of BIPA.

109. Illinois Tech is in possession of biometric identifiers or biometric information from students who use Respondus Monitor.

110. Illinois Tech does not have a written policy made available to the public establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within three (3) years of the individual’s last interaction with the private entity, whichever occurs first, in violation of 740 ILCS 14/15(a).

111. Illinois Tech does not comply with any established retention schedule or destruction guideline.

112. Illinois Tech’s failure to maintain and comply with such a written policy is negligent and reckless because BIPA has governed the collection and use of biometric identifiers and biometric information since 2008, and Illinois Tech is presumed to know these legal requirements. Illinois Tech’s conduct is all the more egregious given the current and public discourse in higher education about how online proctoring systems violate students’ privacy rights.

113. Illinois Tech’s unlawful conduct caused injury to Plaintiff and the proposed Class.

114. Plaintiff and the Class seek damages, attorney’s fees, and costs.

SECOND CLAIM FOR RELIEF
Violation of 740 ILCS 14/15(b)

115. Plaintiff repeats the prior allegations of this Complaint and incorporates them by reference herein.

116. Illinois Tech collects, captures, and obtains biometric identifiers or biometric information from students who use Respondus Monitor in violation of 740 ILCS 14/15.

117. Additionally, Illinois Tech directs and controls the process by which biometric identifiers or biometric information are collected from students who use Respondus Monitor.

118. Furthermore, Illinois Tech is an active participant in the process of collecting, capturing, and obtaining biometric identifiers or biometric information by offering (or requiring) Illinois Tech students to take automatically proctored exams.

119. Illinois Tech collects, captures, and obtains such identifiers or information without informing the students in writing that biometric identifiers or biometric information are being collected or stored in violation of 740 ILCS 14/15(b)(1).

120. Illinois Tech collects, captures, and obtains such biometric identifiers or biometric information without informing the students in writing of the specified purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used in violation of 740 ILCS 14/15(b)(2).

121. Illinois Tech collects, captures, and obtains such biometric identifiers or biometric information without receiving a written release executed by the students in violation of 740 ILCS 14/15(b)(3).

122. Illinois Tech's unlawful conduct is negligent and reckless because BIPA has governed the collection and use of biometric identifiers and biometric information since 2008, and Illinois Tech is presumed to know these legal requirements. Illinois Tech's conduct is all the

more egregious given the current and public discourse in higher education about how online proctoring systems violate students' privacy rights.

123. Illinois Tech's unlawful conduct caused injury to Plaintiff and the proposed Class.

124. Plaintiff and the Class seek damages, attorney's fees, and costs.

THIRD CLAIM FOR RELIEF
Violation of 740 ILCS 14/15(c)

125. Plaintiff repeats the prior allegations of this Complaint and incorporates them by reference herein.

126. Illinois Tech is in possession of biometric identifiers or biometric information it collects when students use Respondus Monitor.

127. In fact, Illinois Tech, per the Monitor Institution Terms, has ownership, control, and retention rights over the biometric identifiers or biometric information collected through students' use of Respondus Monitor.

128. Illinois Tech charges students tuition and other fees for academic courses Illinois Tech offers. To complete required course examinations, students are required to use the Respondus Monitor tool.

129. Illinois Tech profits from requiring students to use Respondus Monitor. Respondus Monitor allows Illinois Tech to offer online coursework and thereby receive tuition dollars from students, and Illinois Tech saves money by using Respondus Monitor because it does not have to pay live proctors to watch students take the exam, either in person or remotely.

130. Illinois Tech's unlawful conduct is negligent and reckless because BIPA has governed the collection and use of biometric identifiers and biometric information since 2008, and Illinois Tech is presumed to know these legal requirements. Illinois Tech's conduct is all the

more egregious given the current and public discourse in higher education about how online proctoring systems violate students' privacy rights.

131. Illinois Tech's unlawful conduct caused injury to Plaintiff and the proposed Class.

132. Plaintiff and the Class seek damages, attorney's fees, and costs.

FOURTH CLAIM FOR RELIEF
Violation of 740 ILCS 14/15(d)

133. Plaintiff repeats the prior allegations of this Complaint and incorporates them by reference herein.

134. Illinois Tech is in possession of biometric identifiers or biometric information it collects when students use Respondus Monitor.

135. Illinois Tech discloses or disseminates students' biometric identifiers or biometric information to its instructors and other agents without the student's consent to the disclosure in violation of 740 ILCS 14/15(d).

136. Illinois Tech's unlawful conduct is negligent and reckless because BIPA has governed the collection and use of biometric identifiers and biometric information since 2008, and Illinois Tech is presumed to know these legal requirements. Illinois Tech's conduct is all the more egregious given the current and public discourse in higher education about how online proctoring systems violate students' privacy rights.

137. Illinois Tech's unlawful conduct caused injury to Plaintiff and the proposed Class.

138. Plaintiff and the Class seek damages, attorney's fees, and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following relief:

A. Certification of the proposed Class;

- B. Appointment of Plaintiff as representative of the Class;
- C. Appointment of the undersigned counsel as counsel for the Class;
- D. An award to Plaintiff and the Class of damages in excess of \$50,000, as allowed by law; and
- E. Orders granting such other and further relief as the Court deems necessary, just, and proper.

JURY TRIAL DEMANDED

Plaintiff, on behalf of himself and all others similarly situated, hereby demands trial by jury on all issues in this Complaint that are triable as a matter of right.

Dated: March 25, 2021

Respectfully submitted,

/s/ Brian K. Murphy

Brian K. Murphy (IL Atty. No. 6225697;
Cook County No. 37524)
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EXHIBIT A

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Respondus[®]

Assessment Tools for Learning System



Terms of Use - Respondus Monitor (Student)

A copy of the Respondus Monitor Terms of Use for Students is shown below for reference. Please note, terms may vary by region. Certain institutions may also use customized versions of these terms. Students should review the terms that appear each time they start an exam as those are the exact terms they must agree to at their institution in order to use Respondus Monitor.

Respondus Monitor - Student Terms of Use

These Terms of Use ("Terms"), which incorporate the Respondus Help Center Terms of Use ("Help Center Terms") included at the end of these Terms, are an agreement between you and Respondus, Inc. ("Respondus"), and between you and your learning institution, or your school ("your Institution"), regarding your use of Respondus Monitor®. By using Respondus Monitor, you agree to these Terms in full and that you are age 14 or older, or age 16 or older in the EEA.

Respondus Monitor is a cloud-based service ("Respondus Monitor Services") and software ("Respondus Monitor Software") (also collectively referred to in these Terms as "Respondus Monitor"), that work together to provide an online interactive database of video, audio, and other data captured during student assessment sessions for use in monitoring students.

The Respondus Help Center is a group of services ("Help Services") provided by Respondus, Inc. that enable users of LockDown Browser and Respondus Monitor to troubleshoot technical issues. The Help Services include, for example, a webcam check, system check, the ability to report an issue to Respondus, and links to a knowledge base and technical support.

REQUIREMENTS OF YOUR INSTITUTION (e.g., your school)

<https://web.respondus.com/tou-monitor-student/>

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Terms of Use - Respondus Monitor (Student) - Respondus

As part of an effort to use available technology to improve your learning experience by providing convenience, security, and cost-effective education, your Institution is requiring students to use Respondus Monitor for certain, or all, courses. In order to use Respondus Monitor, you must agree to these Terms in full, including this section under REQUIREMENTS OF YOUR INSTITUTION, regarding your relationship with your Institution.

HOW "RESPONDUS MONITOR" WILL BE USED. The use of Respondus Monitor will require individual student activity to be recorded, both audibly and visually, during certain assessment sessions. Other data related to individual student activity during assessment sessions may also be recorded by Respondus Monitor, such as, for example, without limitation, time taken by a student to answer specific inquiries on an assessment, etc. The recordings are controlled by your Institution and will be processed by an agent of your Institution, namely, Respondus, through its Respondus Monitor Services. Respondus Monitor may analyze the recordings through automated processes to generate additional data derived from the recordings, with the additional data being associated with individual students for use by your Institution in evaluating the recordings. The additional data, as well as the original recordings, may be evaluated by agents of your Institution, including your instructors, to review, assess, and analyze student performance and conduct, among other things, for the purpose of improving educational processes for students, including investigating student conduct violations. Your Institution works with Respondus to help ensure your privacy regarding the recordings and to comply with federal regulations as to any information or data (including any of the video or audio recordings). See the sections below "PRIVACY" and "PRIVACY AND SECURITY POLICY". The complete Respondus Privacy Policy is available at www.respondus.com/privacy, and we recommend that you review it carefully, particularly if you reside in the European Economic Area.

ACTIVITY GENERAL. You are responsible for your conduct and activities arising during use of Respondus Monitor and for any information or data you provide to or through Respondus Monitor. Your Institution is not responsible for, nor liable for, any mistakes, inaccuracies, lack of usefulness, defamation, omissions, falsehood, obscenity or otherwise offensive material in any of the information or data provided to Respondus Monitor by users. You also understand that your Institution does not, and has no obligation to, monitor, pre-screen nor pre-approve information or data, but that your Institution shall nonetheless have the right (but not the obligation) in its sole discretion, to refuse, delete or move any information or data that is available via Respondus Monitor, for any reason, including a violation of any of these Terms.

WARRANTIES YOU PROVIDE TO YOUR INSTITUTION. You warrant and represent to your Institution that you are not infringing the intellectual property rights of others whenever you provide information or data on or through Respondus Monitor. You also agree that your Institution is not responsible for protecting any intellectual property rights you, or another party, may assert in any information or data you provide to Respondus Monitor.

OPT-OUT. If you cease to agree with these Terms, or the privacy and security policy below at some point in the future, you may opt-out by contacting your Institution. However, opting-out may affect how you will need to complete your course, and your Institution makes no representations regarding how it will affect your relevant course. As such, we encourage you to speak with your instructor before opting out.

DISCLAIMERS. Your Institution disclaims responsibility or liability for the accuracy, content, completeness, legality, reliability, operability or availability of information or data in the Respondus Monitor Service or Software. Your Institution further disclaims any responsibility for the deletion, failure to store, misdelivery, or untimely delivery of any information or data. Your Institution disclaims any responsibility for any harm resulting from downloading or accessing any information or data through Respondus Monitor. You will bear all risk associated with any information or data you access. Your access or use of any information or data provided by Respondus Monitor or third parties is conditioned on your agreement to these Terms including these disclaimer provisions. Further disclaimers applicable to your relationship with your Institution, as well as with Respondus, are set forth below in the DISCLAIMER section under REQUIREMENTS OF RESPONDUS AND LICENSE PROVIDED BY RESPONDUS.

PRIVACY. The section below entitled PRIVACY & SECURITY POLICY, in conjunction with the full Respondus Privacy Policy available at www.respondus.com/privacy, shall govern the privacy policy with respect to Respondus Monitor. You agree with all reservations of right(s), disclaimers of liability, promises, and acknowledgements governing your relationship with Respondus under the PRIVACY & SECURITY POLICY and the full Respondus Privacy Policy available at www.respondus.com/privacy. As controller of the data, your Institution reserves the right at all times to disclose any information or data (including recordings and any content to the extent applicable) pertaining to you or any other user, as necessary, to comply with the law, a regulation or a governmental request.

MISCELLANEOUS. All legal issues arising from or related to the use of Respondus Monitor between you and your Institution shall be construed in accordance with the laws of the state in which your Institution resides, or if your Institution resides in more than one state, the state in which you attend your Institution, or the state in which the branch of your Institution resides with which you correspond. By using Respondus Monitor and thus agreeing to these Terms, you consent to personal jurisdiction and venue in the state and federal courts located in and serving the county in which your Institution resides, or if your Institution resides in more than one county, the county in which you attend your Institution, or the county in which the branch of your Institution resides with which you correspond. Your Institution may terminate your use of Respondus Monitor if you violate these Terms, and will terminate your use if you use Respondus Monitor to repeatedly infringe on the intellectual property rights of others. If your Institution should fail to enforce any right or provision in these Terms, this failure shall not constitute a waiver of such right or provision or of any other rights or provisions in these Terms. If a court should find that one or more rights or provisions set forth in these Terms are invalid, you agree that the remainder of the right or provisions shall be enforceable and that, to the extent permitted by law, the court shall give effect to the parties' intentions, as reflected in any such right or provision that has been declared invalid or unenforceable. If you do not agree to the Terms, you will not be permitted to use Respondus Monitor. Any term that would naturally

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survive termination of these Terms shall survive, such as, for example, the disclaimers, and any warranties you provide herein, and this miscellaneous section.

Your Institution may terminate your access to Respondus Monitor at any time, if there is a violation of these Terms.

LICENSE REQUIREMENTS PROVIDED BY RESPONDUS

To the extent any terms below conflict with any terms under the REQUIREMENTS OF YOUR INSTITUTION above, the terms above shall govern with respect to your relationship with your Institution and the terms below shall govern with respect to your relationship with Respondus.

In addition, you acknowledge and understand that certain actions set forth in these Terms, which may be taken by Respondus (as outlined below), shall be taken at the direction of your Institution with Respondus acting as an agent of your Institution.

LICENSE GRANT AND ONLINE USE. If you accept these Terms and pay the required license fees to Respondus (if required by Respondus, at its discretion, as set forth below in the Section entitled FEES), you are granted a non-exclusive, non-transferable, non-assignable license to use Respondus Monitor subject to the conditions of these Terms. You may not modify, distribute, sell, or sublicense any part of Respondus Monitor. You may not reverse engineer or attempt to extract the source code of Respondus Monitor, unless laws prohibit those restrictions or you have written permission from Respondus. Respondus Monitor is licensed to you, not sold or transferred to you. You agree that you may not use Respondus Monitor in any way that conflicts with or violates these Terms or other agreements between you and any third-party, including that of your Institution's learning management system ("LMS") through which you are accessing the Respondus Monitor Services.

FEES. The license grant to use Respondus Monitor is separate from the license grant to use Respondus LockDown Browser. If you are initiating Respondus Monitor for demonstration purposes, you will not be charged. Also, Respondus may grant you a temporary license free-of-charge to use Respondus Monitor, at its sole discretion (such as, for example, for beta testing or pilot program purposes), but such free license grant may be terminated at any time by Respondus at its sole discretion.

PRIVACY & SECURITY POLICY. Respondus cares about your privacy and the security of your personal data. The Respondus Privacy Policy is available at www.respondus.com/privacy, and we recommend that you review it carefully, particularly if you reside in the European Economic Area. The information below summarizes important aspects of the security used with Respondus Monitor and how we process your personal data. Together with your Institution, the controller of the data, we work to protect the online privacy of those who use Respondus Monitor.

Respondus Monitor uses the following methods to limit access to personal information or data (e.g., student recordings or other personal information).

Respondus Monitor uses industry standard SSL (Secure Socket Layer) or TLS (Transport Layer Security) encryption to transfer information. Student identifiable information including name, grade, course name, and photos that show identification cards can only be accessed through the learning management system's (LMS's) extension architecture (e.g., Blackboard Building Block).

Only users with instructor credentials for the LMS course (e.g., instructors, teaching assistants, LMS administrators) are able to view video sessions in conjunction with student identifiable information.

Video URLs are "one-time use" and will not function if copied. Respondus uses independent, third-party security firms to perform "penetration testing" of the Respondus Monitor system. This includes a review of the Respondus Monitor architecture and the testing for vulnerabilities and exploits.

Unfortunately, no data transmission over the Internet is 100% secure, and Respondus does not warrant the security of any information collected using its services. By agreeing to these Terms, you agree to use Respondus Monitor at your own risk, and agree that Respondus shall not be liable if a security breach occurs, if the site malfunctions, or if information is misused or mismanaged in any way to your detriment or the detriment of a student or third party, whether by Respondus, your institution, or an unauthorized third party.

The use of Respondus Monitor will require individual student activity to be recorded, both audibly and visually, during certain assessment sessions. Other data related to individual student activity during assessment sessions may also be recorded by Respondus Monitor, such as, for example, without limitation, time taken by a student to answer specific inquiries on an assessment, etc. The recordings may be stored by Respondus, through its Respondus Monitor Services. Respondus Monitor may analyze the recordings through automated processes to generate additional data derived from the recordings, with the additional data being associated with individual students for use by your Institution in evaluating the recordings. The original recordings and data (as referenced above) may be evaluated by agents of your Institution, including your instructors, to review, assess, and analyze student performance and conduct, among other things. The data and recordings may also be used for investigating student conduct violations. Respondus personnel do not review/analyze the recordings except as may be required to resolve technical problems, improve system performance, modify Respondus Monitor, investigate violations of these Terms, or as may be directed by your Institution.

Each student that is recorded will have a unique username or identification code ("ID") and password through the Institution's (or learning institution's) LMS. The ID and password will be usable by students, at the discretion of the Institution, to allow students to transmit recordings and data to the online component of Respondus Monitor if required by Institution as part of an assessment activity. Instructors, administrators and other agents of Institution, may access those recordings and data related to their students through Respondus Monitor. You must guard your password and not share it with anyone to help ensure your security and privacy.

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Random samples of video and/or audio recordings may be collected via Respondus Monitor and used by Respondus to improve the Respondus Monitor capabilities for institutions and students. The recordings may be shared with researchers (research institutions and/or biometric experts) under contract with Respondus to assist in such research, and the researchers are under written obligation to maintain the video and/or audio recordings in confidence and under terms at least as strict as the terms herein. No personally identifiable information for students is provided with the video and/or audio recordings to researchers, such as the student's name, course name, institution, grades, or student identification photos submitted as part of the Respondus Monitor exam session. Other than the research purposes identified above, Respondus will not share recordings or personally identifying information of any particular student (collectively also referred to herein as "personal information or data") with third parties (third parties do not include the student who provided the personal information, the parent/guardian of a student under the age of 18 who provided personal information, or the institution who authorized access by the student to Respondus Monitor Services) unless specifically required by Institution. For example, if Institution uses third parties to manage student personal information (e.g., Institution agents), the Institution may direct Respondus to share the personal information with that third party under the Institution's direction and control.

If, in the future, Respondus, or substantially all of its assets are acquired, the maintenance of all collected personal information or data (including any recordings) may be transferred to the acquiring party, provided that the acquiring party implement a privacy and security policy at least as restrictive as this one, or otherwise compliant with current legal standards, and provided that the collected personal information and data remain under the control of your Institution.

Respondus reserves the right at all times to disclose any information or data (including recordings and any content to the extent applicable) stored by you, your Institution, or any other user as necessary, to comply with the law, a regulation or a governmental request, or to edit or remove any information or data, in whole or in part, that in Respondus' sole discretion, is in violation of these Terms.

If you have any questions regarding privacy and security policy, please contact Respondus by email at or by writing to:

Respondus, Inc.
Attn: Legal - Privacy Team
8201 164th Ave NE, Suite 200
Redmond, WA 98052
USA
Via email: privacy@Respondus.com

USER CONDUCT. You promise NOT to use Respondus Monitor for any of the following purposes or activities:

- a. conducting or supporting illegal activity of any type whatsoever;
- b. transmitting or storing worms or viruses or any code of a destructive nature;
- c. threatening, harassing, abusing, impersonating, injuring or intimidating others;
- d. engaging in vulgar, invasive, or hateful conduct, or conduct that invades another's privacy;
- e. interfering with others' use of Respondus Monitor, unless such interference is for the purpose of complying with another section of these Terms;
- f. delivering spam or collecting information to deliver spam, or sending unsolicited advertisements;
- g. decompiling, disassembling, reverse engineering or otherwise attempting to discover any source code contained in Respondus Monitor;
- h. disguising the origin of any content transmitted through Respondus Monitor or manipulating your presence on Respondus Monitor; and/or
- i. causing the launch of any automated system(s) that access Respondus Monitor in a manner that sends more request messages to servers of Respondus in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser.

RESPONDUS USERNAME/ID AND PASSWORD POLICY. You must guard the access credentials (e.g., user name and password) that you use to access your Institution's learning system to help ensure your own privacy and security with respect to recordings you initiate using Respondus Monitor, and not share those credentials with others.

ACTIVITY GENERAL. You are responsible for your conduct and activities arising during use of Respondus Monitor and for any information or data you provide to or through Respondus Monitor. You agree that Respondus is not responsible for, nor liable for, any mistakes, inaccuracies, lack of usefulness, defamation, omissions, falsehood, obscenity or otherwise offensive material in any of the information or data provided to Respondus by users. You also understand that Respondus does not, and has no obligation to, monitor, pre-screen nor pre-approve information or data, but that Respondus shall nonetheless have the right (but not the obligation) in its sole discretion, to refuse, delete or move any information or data that is available via Respondus Monitor, for any reason, including a violation of any of these Terms (however, if Respondus elects to, for any reason, refuse, delete or move any recording of student activity for violation of these Terms, Respondus may save a copy of such recording for access by the Institution).

LICENSE PROVIDED TO RESPONDUS. Respondus Monitor will save all recordings of students for a period of one (1) year. Institutions have the ability to retain the data for up to an additional four (4) years. However, Respondus does not guarantee removal of all traces of any information or data (including recordings) from the Respondus Monitor Services after deletion. Respondus does not claim ownership in the information or data Institution or any students provide; however, by providing information or data to Respondus, you grant Respondus, and its affiliates, a fully paid-up, perpetual license to use, store, modify, copy, and transmit any such information or data for the purpose of carrying out the Respondus Monitor Services in accordance with these Terms. **CHANGES.** Respondus reserves the right to change these Terms at any

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time, at its discretion, without advance notice to you. Respondus also reserves the right to terminate this service at any time after the end of your current license, without notice; however, if your license is a free license, Respondus reserves the right to terminate your license at any time without notice. If your Institution terminates use of Respondus Monitor during your current license, such that you no longer require use of Respondus Monitor, no refunds will be available.

WARRANTIES YOU PROVIDE. You warrant and represent to Respondus that you are not infringing the intellectual property rights of others whenever you provide information or data on or through Respondus Monitor. You also agree that Respondus is not responsible for protecting any intellectual property rights you, or another party, may assert in any information or data you provide to Respondus Monitor.

OPT-OUT. If you cease to agree with these Terms, or the privacy and security policy at some point in the future, you may opt-out by contacting your Institution. However, opting-out may affect how you will need to complete your course, and Respondus makes no representations regarding how it will affect your relevant course. As such, we encourage you to speak with your instructor before opting out.

DISCLAIMERS. Respondus disclaims responsibility or liability for the accuracy, content, completeness, legality, reliability, operability or availability of information or data in Respondus Monitor. Respondus further disclaims any responsibility for the deletion, failure to store, misdelivery, or untimely delivery of any information or data. Respondus disclaims any responsibility for any harm resulting from downloading or accessing any information or data through Respondus Monitor. You will bear all risk associated with any information or data you access. Your access or use of any information or data provided by Respondus Monitor or third parties in connection with Respondus Monitor is conditioned on your agreement to these Terms including these disclaimer provisions.

RESPONDUS MONITOR IS PROVIDED TO YOU, "AS IS," WITH NO WARRANTIES WHATSOEVER. ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED. TO THE FULLEST EXTENT PERMITTED BY LAW, RESPONDUS DISCLAIMS ANY WARRANTIES FOR THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF RESPONDUS MONITOR. RESPONDUS SIMILARLY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY WARRANTIES FOR ANY INFORMATION OR ADVICE OBTAINED THROUGH RESPONDUS MONITOR.

YOU UNDERSTAND AND AGREE THAT ANY INFORMATION OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF RESPONDUS MONITOR IS OBTAINED AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT MAY RESULT IN THE DOWNLOAD OF SUCH INFORMATION OR DATA. UNDER NO CIRCUMSTANCES SHALL RESPONDUS BE LIABLE TO ANY USER ON ACCOUNT OF THAT USER'S USE OR MISUSE OF AND RELIANCE ON RESPONDUS MONITOR. SUCH LIMITATION OF LIABILITY SHALL APPLY TO PREVENT RECOVERY OF DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND PUNITIVE DAMAGES (EVEN IF RESPONDUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON RESPONDUS MONITOR, FROM INABILITY TO USE THE RESPONDUS MONITOR, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF RESPONDUS MONITOR OR BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH RESPONDUS MONITOR. THE FOREGOING DISCLAIMERS, WAIVERS AND LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

INTELLECTUAL PROPERTY. All web design, text, graphics, the selection and arrangement thereof, and all software compilations, underlying source code, software and all other material on Respondus Monitor are either the copyright or trademark of Respondus, or covered by other intellectual property rights of Respondus or a third party licensor of Respondus. Any use of Respondus Monitor beyond the purpose indicated above is strictly prohibited. You shall not acquire any rights in Respondus' intellectual property by using Respondus Monitor.

MISCELLANEOUS. All legal issues arising from or related to the use of Respondus Monitor between you and Respondus shall be construed in accordance with the laws of the State of Washington, without regard to conflicts of law principles. Respondus may terminate your use of Respondus Monitor if you violate these Terms, and will terminate your use if you use Respondus Monitor to repeatedly infringe on the intellectual property rights of others. These Terms constitute the entire agreement between the parties with respect to the subject matter contained herein and supersede any other agreements between Respondus and you regarding Respondus Monitor. If Respondus should fail to enforce any right or provision in these Terms, this failure shall not constitute a waiver of such right or provision or of any other rights or provisions in these Terms. If a court should find that one or more rights or provisions set forth in these Terms are invalid, you agree that the remainder of the right or provisions shall be enforceable and that, to the extent permitted by law, the court shall give effect to the parties' intentions, as reflected in any such right or provision that has been declared invalid or unenforceable. If you do not agree to the Terms, you will not be permitted to use this Service. Any term that would naturally survive termination of these Terms shall survive, such as, for example, the DISCLAIMERS, WARRANTIES YOU PROVIDE, and this MISCELLANEOUS section.

Respondus Help Center Terms of Use ("Help Center Terms")

The Respondus Help Center is a group of services ("Help Services") provided by Respondus, Inc. ("Respondus") that enable users of LockDown Browser® and Respondus Monitor® to troubleshoot technical issues. The Help Services include, for example, a webcam check, system check, the ability to report an issue to Respondus, and links to a knowledge base and technical support.

Accepting the Terms

In order to use the Help Services, you must first agree to the terms ("Help Center Terms") as outlined herein. You may not use the Help Services if you do not accept the Help Center Terms. You can accept the Help Center Terms by: (A) clicking to accept or agree to the Help

<https://web.respondus.com/tou-monitor-student/>

Center Terms, where this option is made available to you by Respondus in the user interface of the Help Services or other Respondus services; or (B) by otherwise using the Help Services. In any case, you understand and agree that Respondus will treat your use of the Help Services as acceptance of the Help Center Terms.

Data Collection

Respondus collects data to operate effectively and to strive to provide you with the best experience with LockDown Browser and Respondus Monitor. You provide some of this data directly, such as when you contact us for support. Some data is obtained by recording how you interact with LockDown Browser and Respondus Monitor by, for example, receiving error reports or usage data from software running on your device. The data we collect depends on the features you use within the Help Services, and includes the following:

Webcam & Microphone Check. The Webcam and microphone check streams video and audio from your webcam to the Respondus servers. The video and audio can then be played back by you to ensure the webcam and microphone are working properly. The video and audio recorded during the webcam and microphone check is stored in temporary cache on the Respondus server and is automatically deleted in about an hour. Persistent storage is not used for these recordings, and Respondus does not provide a way to electronically identify the recordings as being transmitted from a specific user.

System Check. The System Check gathers certain information from your computing device, the networking environment, the institution's Learning Management System, and the Respondus Monitor server itself.

All data gathered during the System Check is presented to you on your screen, including a unique System Check ID. The System Check does NOT contain username, user ID, or the password used to access the institution's Learning Management System.

You have the option to send System Check results by email, and if so, you must enter an email address for the recipient of the email message. If the System Check results are sent by email, log files from software of LockDown Browser are additionally transmitted to a Respondus server. Log files contain details of the interaction between the LockDown Browser and/or Respondus Monitor and your institution's Learning Management System, from the time you log into the Learning Management System using LockDown Browser and Respondus Monitor until the session is exited or terminated. Log files are stored locally on your computer in an encrypted format and, if transmitted to Respondus, are sent in encrypted format over HTTPS. Log files do NOT contain user name, user ID, or the password used to access the institution's Learning Management System.

System Check data and log files may be sent to a Respondus web server or a third party cloud server for storage and further processing by Respondus. Respondus may use System Check data and log files to assist you with a technical issue. Respondus may also aggregate and analyze the System Check data to, for example, improve the Software or its technical support services. System Check data and log files aren't sold, distributed, or made available to affiliate or third party businesses. Report An Issue. The Report An Issue feature enables you to provide feedback to Respondus about LockDown Browser and Respondus Monitor. System Check data and log files, as described above, are collected by Respondus during this process. You are informed of this transfer of data each time the Report An Issue feature is used. You may choose, but you are not required, to provide an email address and contact information when using this feature. System Check data, log files, contact information, and feedback you provide may be sent to a Respondus web server or third party cloud server for storage and further processing by Respondus. No data transmitted to Respondus from the Report An Issue feature will be sold, distributed, or made available to affiliate or third party businesses.

Knowledge Base. A link to a knowledge base is included with the Help Services. No individual data is collected by Respondus during the use of the knowledge base, although Respondus may analyze aggregated usage data of the knowledge base to improve the service.

Technical Support. The Help Services contains a link that enables users to open a support ticket with Respondus. The System Check ID for the most recent System Check is automatically populated in the form used to create a support ticket. You must additionally enter your name and a valid email address through which communication with the Respondus support team will occur. Throughout the support process, you may, at your own discretion, provide personally identifiable information that will be used by the Respondus support team to analyze the issue and communicate with you. All communication between you and the Respondus team is stored on a Respondus web server, and may be used by Respondus to improve LockDown Browser and/or Respondus Monitor.

Express Incorporation. All conditions set forth in the Respondus Monitor Terms of Use, including the RESPONDUS PRIVACY POLICY at www.respondus.com/privacy, and the sections PRIVACY & SECURITY POLICY, USER CONDUCT, RESPONDUS USERNAME/ID AND PASSWORD POLICY, ACTIVITY GENERAL, CHANGES, WARRANTIES YOU PROVIDE, OPT-OUT, DISCLAIMERS, INTELLECTUAL PROPERTY, and MISCELLANEOUS are expressly included in these Help Center Terms to the extent applicable. Respondus will not use data collected via the Help Services in any way that conflicts with the Respondus Monitor Terms of Use. You also expressly agree not to use the Help Services in any way that conflicts with any of the Respondus Monitor Terms of Use, including, for example, the prohibitions set forth in the USER CONDUCT section. Respondus cannot make representations regarding the security of information you transmit through a third party email service provider while using the Help Services; however, to the extent Respondus stores any such information, the storage of such information by Respondus will be compliant with the PRIVACY & SECURITY POLICY and the RESPONDUS PRIVACY POLICY at www.respondus.com/privacy.

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Respondus[®]

Assessment Tools for Learning System



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Respondus Privacy Policy

Last Updated: September 28, 2020

Overview

Respondus cares about your privacy. For this reason, we collect and use personal data only as it might be needed to deliver an exceptional experience using a Respondus application, website, service, or tool (collectively "Services"), regardless of how you access or use them, including through mobile devices.

Our Privacy Policy is intended to describe how and what data we collect, and how and why we use your personal data. It also describes options we provide that let you take control of your personal data that we process.

If at any time you have questions about our practices or any of your rights described below, you may contact us at privacy@respondus.com. This inbox is actively monitored and managed so we can deliver an experience that you can trust.

Similarly, we've created a [Privacy Center](#) to provide answers to your most common questions and service-specific details about personal data collection and usage.

What is Personal Information?

Personal Information is a name, address, telephone number, email address, identification number, online identifier, and other data collected that could directly or indirectly identify you.

We do not consider personal information to include information that has been anonymized or aggregated so that it can no longer be used to identify a specific natural person, whether in combination with other information or otherwise.

What information do we collect?

We collect information so we can provide the best possible experience when you use our Services. Much of what you likely consider personal data is collected directly from you when you:

1. create an account or purchase any of our Services (e.g. name, address, email, phone number, and other billing information);
2. interact with an account manager (e.g. email, phone number, address, job title, institution);
3. request assistance from our customer support team (e.g. email, phone number);
4. complete contact forms, register a product, sign up for a beta program, submit feedback, sign up for a newsletter, or request other information from us (e.g. email); or,
5. participate in contests and surveys, visit our exhibit at a tradeshow, attend a training webinar, or otherwise participate in activities we promote that might require information about you.

We also collect additional information when delivering our Services to you to ensure necessary and optimal performance. This might include account related information that's collected in association with your use of our Services, such as account number, purchases, when products renew or expire, information requests, and customer service requests and notes or details explaining what you asked for and how we responded.

We may also collect information when you open or view a marketing email from us or click on a link within a marketing email.

Our [Privacy Center](#) provides further details about the personal information gathered across various Services, how that information is used, and the legal basis for using the data.

Cookies and similar technologies

Cookies and similar tracking technologies store information about your use of a particular website or service and are typically used to make services more convenient and personalized. Most cookies are "session cookies," which are automatically deleted whenever you leave a website (and end the "session"). Some cookies remain on your computer until you remove them.

We use cookies and similar tracking technologies on our websites (1) to estimate the number of visitors to the site, (2) to measure general traffic patterns, (3) to store the items you've placed in your shopping cart, and (4) to improve and customize your user experience with our Services. For additional information, and to learn how to manage the technologies we utilize, you can read our policy on [our use of cookies, web beacons and similar technologies](#).

Most browsers permit you to set the browser to accept, reject, or notify you of cookie use. However, some parts of our Services may not function properly if your browser is set to reject cookies. For example, the Administrator Area of Respondus.com uses session cookies to allow a user to navigate from one page to the next without having to login again for each page.

How we use your personal information

We strongly believe in both minimizing the data we collect and limiting its use and purpose to only (1) that for which we have been given permission, (2) that which is necessary to deliver the Services you purchase or interact with, or (3) as we might be required or permitted for legal compliance or other lawful purposes.

We collect various information relating to your purchase or use and/or interactions with our Services to deliver, improve, update and enhance the Services we provide you. We use this information to:

- Improve and optimize the operation and performance of our Services (again, including our websites and mobile applications)
- Diagnose problems with and identify any security risks, errors, or needed enhancements to the Services
- Detect and prevent fraud and abuse of our Services and systems
- Collect aggregate statistics about use of the Services
- Understand and analyze how you use our Services and what products and services are most relevant to you.

Often, much of the data collected is aggregated or statistical data about how individuals use our Services, and is not linked to any personal data, but to the extent that usage data is itself personal data, or is linked or linkable to personal data, we treat it accordingly.

How we might share your personal information

We do not sell, rent, or otherwise disclose your personal information to third parties for their marketing and advertising purposes. We may disclose your personal information to partner companies where you have agreed to have that information shared. This disclosure may be required for us to provide you access to our Services, to comply with our legal obligations, to enforce our Terms of Use, to facilitate our marketing activities, or to prevent, detect, mitigate, and investigate fraudulent or illegal activities related to our Services. We attempt to minimize the amount of personal information we disclose to what is directly relevant and necessary to accomplish the specified purpose.

If you use our Services from a country other than the country where our servers are located, your communications with us may result in the transfer of your personal data across international borders. Also, when you call us or initiate contact with a Respondus representative, we may provide you with support from one of our global locations outside your country of origin. In these cases, your personal data is handled according to this Privacy Policy.

We cooperate with government and law enforcement officials and private parties to enforce and comply with the law. We will disclose any information about you to government or law enforcement officials or private parties as we, in our sole discretion, believe necessary or appropriate to respond to claims and legal process (such as subpoena requests), to protect our property and rights or the property and rights of a third party, to protect the safety of the public or any person, or to prevent or stop activity we consider to be illegal or unethical. To the extent we are legally permitted to do so, we will take reasonable steps to notify you in the event that we are required to provide your personal information to third parties as part of a legal process.

We remain responsible for care of the data that is transferred to third parties, unless you direct us to forward it to the third party.

How we might communicate with you

We may contact you directly regarding products or services you have purchased from us, such as may be necessary to deliver transactional or service related communications. We may also contact you regarding products or services when additional information is requested. We may contact you with offers for additional services we think you'll find valuable if you give us consent, or where allowed based upon legitimate interests. These contacts may include email, text (SMS) messages, telephone calls, and printed mailings.

How you can access, update or delete your data

To update your subscription preferences or discontinue receiving marketing emails from us, scroll to the bottom of a Respondus email message and select the "Unsubscribe" or "Profile Center" link. Follow the instructions from there.

You can also email subscribe@respondus.com with instructions on your communication preferences; to unsubscribe from all email communications, include the word UNSUBSCRIBE in the subject line.

If you would like to request that your personal information be completely removed from our database, please contact us at privacy@respondus.com.

If you would like to access or update your personal information, please contact us at privacy@respondus.com.

How we secure, store and retain your data

We follow generally accepted standards to store and protect the personal data we collect, both during transmission and once received and stored, including the use of encryption where appropriate.

We retain personal data only for as long as necessary to provide the Services you have requested and thereafter for a variety of legitimate legal or business purposes. These might include retention periods:

- mandated by law, contract or similar obligations applicable to our business operations;
- for preserving, resolving, defending or enforcing our legal/contractual rights; or
- as needed to maintain adequate and accurate business and financial records.

If you have any questions about the security or retention of your personal data, you can contact us at privacy@respondus.com.

Changes in our Privacy Policy

We reserve the right to modify this Privacy Policy at any time. If we decide to change our Privacy Policy, we will post those changes on our website and any other places we deem appropriate, so that you are aware of what information we collect, how we use it, and under what circumstances, if any, we disclose it. If we make material changes to this Privacy Policy, we will notify you here, by email, or by means of a notice on our home page, at least thirty (30) days prior to the implementation of the changes.

Contact Us

11/2/2020

Privacy Policy - Respondus

If you have any questions, concerns or complaints about our Privacy Policy, our practices or our Services, you may contact us by email at privacy@respondus.com.

If you prefer, you can send correspondence to:

Respondus
Attn: Legal - Privacy Team
8201 164th Ave NE, Suite 200
Redmond, WA 98052
USA

We will respond to all requests, inquiries or concerns within thirty (30) days, but probably much sooner than that.

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EXHIBIT C

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Terms of Use - Respondus Monitor (Institution)

A copy of the Respondus Monitor Terms of Use for institutions is shown below for reference. Please note, terms may vary by region. Certain institutions may also use customized versions of these terms. License administrators can find the terms of use specific to their institution in the Respondus Administrator area.

Respondus Monitor - Institution License and Terms of Use

These Terms of Use ("Terms") are an agreement between the institution to which license and access to Respondus Monitor is granted ("Institution"), and Respondus, Inc., ("Respondus"), regarding the Institution's use of Respondus Monitor. Institution agrees to these Terms in full before using Respondus Monitor.

SERVICE AND SOFTWARE COMPONENTS. Respondus Monitor is a cloud-based service ("Respondus Monitor Services") and software ("the Software") (also collectively referred to herein as "Respondus Monitor"), that work together to provide an online interactive database of video/audio

recordings and associated data featuring student activity captured during student assessment sessions for use in monitoring students.

LICENSE GRANT AND USE. If Institution accepts these Terms, Institution is granted a non-exclusive, non-transferable, non-assignable license to use the Software and to access and use the Respondus Monitor Services, in accordance with these Terms, subject to license fees requirements as explained below, and as may be further specified in a separate license fee agreement. Institution may not modify, distribute, sell, or sublicense any part of Respondus Monitor. Institution may not reverse engineer or attempt to extract the source code of Respondus Monitor, unless laws prohibit those restrictions or unless Institution otherwise receives written permission from Respondus. Respondus Monitor is licensed to Institution, not sold or transferred to Institution. Institution agrees that it may not use Respondus Monitor in any way that conflicts with or violates these Terms or other agreements between Institution and any third-party, including that of the learning management system ("LMS") through which Institution accesses Respondus Monitor Services. Institution warrants and represents that it will not violate any law, regulation or contractual obligation by entering into these Terms, and that it is free to enter into these Terms.

FEES. The license grant for Respondus Monitor is separate from that of Respondus Lockdown Browser. If Institution is being granted access to a "beta" version of Respondus Monitor under these Terms, or is participating in a pilot program for Respondus Monitor under these Terms, no license fees will be charged by Respondus for Institution's use of Respondus Monitor as part of the pilot program, or for Institution's use of the beta version made available by Respondus. However, Respondus reserves the right to terminate any non-paid license grant to the Software or non-paid grant of access to Respondus Monitor Services (including for a beta version or pilot program), at any time, subject to any other written agreement(s) between the parties. License fees for Respondus Monitor are provided in a separate license fee agreement, if and when applicable, and are incorporated herein by reference.

SUPPORT AND MAINTENANCE. Support and maintenance terms for Respondus Monitor are detailed in the separate license fee agreement, if and when applicable, and are incorporated herein by reference.

PRIVACY & SECURITY POLICY. Respondus cares about your privacy and the security of your personal data. The Respondus Privacy Policy is available at www.respondus.com/privacy, and we recommend that you review it carefully, particularly if you reside in the European Economic Area. The information below summarizes important aspects of the security used with Respondus Monitor and how we process your personal data. Together with your Institution, the controller of the data, we work to protect the online privacy of those who use Respondus Monitor.

Respondus Monitor uses the following methods to limit access to video sessions and associated data.

1. Respondus Monitor uses industry standard SSL (Secure Sockets Layer) or TLS (Transport Layer Security) encryption to transfer information.
2. Student identifiable information including name, grade, course name, and photos that show identification cards can only be accessed through the learning management system's (LMS's) extension architecture (e.g., Blackboard Building Block).
3. Only users with instructor credentials for the LMS course (e.g., instructors, teaching assistants, LMS administrators) are able to view video sessions in conjunction with the student identifiable information.
4. Video URLs are "one-time use" and will not function if copied.
5. Respondus uses independent, third-party security firms to perform "penetration testing" of the Respondus Monitor system. This includes a review of the Respondus Monitor architecture and the testing for vulnerabilities and exploits.

Unfortunately, no data transmission over the Internet is 100% secure, and Respondus does not warrant the security of any information collected using its services. By agreeing to these Terms, Institution agrees to use Respondus Monitor at its own risk, and agrees that Respondus shall not be liable if a security breach occurs, if the site malfunctions, or if information is misused or mismanaged in any way to Institution's detriment or to the detriment of a student, staff member or third party, whether by Respondus, Institution, or an unauthorized third party.

Each student that is recorded will have a unique username or identification code ("ID") and password through the Institution's LMS. The ID and password will be usable by students, at the discretion of Institution, to allow students to transmit recordings to the online component of Respondus Monitor if required by Institution as part of an assessment activity. Instructors, administrators, and other agents of Institution may access those recordings related to the Institution's students through Respondus Monitor.

Random samples of video and/or audio recordings may be collected via Respondus Monitor and used by Respondus to improve the Respondus Monitor capabilities for institutions and students. The recordings may be shared with researchers (research institutions and/or biometric experts) under contract with Respondus to assist in such research, and the researchers are under written obligation to maintain the video and/or audio recordings in confidence and under terms at least as strict as the terms herein. No personally identifiable information for students is provided with the video and/or audio recordings to researchers in the nature of student names, course names, institution, grades, or student identification photos submitted as part of the Respondus Monitor exam session.

Other than the research purposes identified above, Respondus will not share recordings or personally identifying information of any particular student (collectively also referred to herein as "personal information or data") with third parties (third parties do not include the student who provided the personal information, the parent/guardian of a student under the age of 18 who provided personal information, or the institution who authorized access by the student to Respondus Monitor Services), unless specifically required by Institution. For example, if Institution uses third parties to manage student personal information, Institution may direct Respondus to share the personal information or data with that third party.

under Institution's direction and control.

If, in the future, Respondus, or substantially all of its assets are acquired, the maintenance of all collected personal information or data (including any recordings) may be transferred to the acquiring party, provided that the acquiring party implement a privacy and security policy compliant with current legal standards, and provided that the collected personal information and data remain under the control of Institution.

Respondus Monitor analyzes the recordings of student activity as part of an automated proprietary process. Respondus personnel do not review/analyze the recordings except as may be required to resolve technical problems, improve system performance, modify Respondus Monitor services, investigate violations of these Terms, or as may be directed by Institution.

Respondus reserves the right at all times to disclose any information or data (including recordings and any content to the extent applicable) stored by Institution, students or any other user as necessary, to comply with the law, a regulation or a governmental request, or to edit or remove any information or data, in whole or in part, that in Respondus' sole discretion, is in violation of these Terms (however, if Respondus elects to, for any reason, refuse, delete or move any recording of student activity for violation of these Terms, Respondus will save a copy of such recording for access by the Institution, subject to conditions of these Terms that define the duration of storage of such recordings otherwise).

If you have any questions regarding privacy and security policy, please contact Respondus by email or by writing to:

Respondus, Inc.
Attn: Legal - Privacy Team
8201 164th Ave NE, Suite 200
Redmond, WA 98052 USA
Via email: privacy@respondus.com

USER CONDUCT. Institution shall be responsible for the conduct of all of its agents, including, such as, for example, instructors that use Respondus Monitor, to ensure that Institution's agents comply with these Terms on behalf of Institution. Institution promises NOT to use Respondus Monitor Services or Software for any of the following purposes or activities:

- a. conducting or supporting illegal activity of any type whatsoever;
- b. transmitting or storing worms or viruses or any code of a destructive nature;
- c. threatening, harassing, abusing, impersonating, injuring or intimidating others;
- d. engaging in vulgar, invasive, or hateful conduct, or conduct that invades another's privacy;
- e. interfering with others' use of Respondus Monitor Services or Software, unless such interference is for the purpose of complying with another section of these Terms;
- f. delivering spam or collecting information to deliver spam, or sending unsolicited advertisements;
- g. decompiling, disassembling, reverse engineering or otherwise attempting to discover any source code contained in the Software or the Respondus Monitor Services;
- h. disguising the origin of any content transmitted through the Respondus Monitor Services or Software or manipulating a user's presence on Respondus Monitor Services or Software; and/or
- i. causing the launch of any automated system(s) that access the Respondus Monitor Services or Software in a manner that sends more request messages to servers of Respondus in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser.

ACTIVITY GENERAL. Institution is responsible for the conduct of all of its agents, including instructors, and their activities arising during use of Respondus Monitor and for any information or data they provide to or through Respondus Monitor. Institution agrees that Respondus is not responsible for, nor liable for, any mistakes, inaccuracies, lack of usefulness, defamation, omissions, falsehood, obscenity or otherwise offensive material in any of the information or data provided to users. Institution also understands that Respondus does not, and has no obligation to, monitor, pre-screen nor pre-approve information or data, but that Respondus shall nonetheless have the right (but not the obligation) in its sole discretion, to refuse, delete or move any information or data that is available via Respondus Monitor, if such information or data violates any of these Terms, subject to the obligation to save any student activity recordings as described above under the PRIVACY & SECURITY POLICY section and as further described below under LICENSE PROVIDED TO RESPONDUS.

LICENSE PROVIDED TO RESPONDUS. Respondus Monitor will save all recordings of students for a period of one (1) year. Institutions have the ability to retain the data for up to an additional four (4) years. However, Respondus does not guarantee removal of all traces of any information or data (including recordings) from the Respondus Monitor Services after deletion. **Respondus does not claim ownership in the information or data Institution or any students provide;** however, by providing information or data to Respondus, Institution grants Respondus, and its affiliates, a fully paid-up, perpetual license to use, store, modify, copy, and transmit any such information or data for the purpose of carrying out the Respondus Monitor Services in accordance with these Terms.

CHANGES AND TERMINATION. Respondus reserves the right to change these Terms, at its discretion, provided that it provides written notice to Institution of changes made to the Terms within fifteen (15) days after a change has been made. If the change is required by generally applicable law ("generally applicable law" means law, including, without limitation, any regulation, commonly applicable to other software or service providers providing or rendering same or similar software or services to same or similar licensees/customers as Institution), such change shall not form a basis for Institution to terminate the separate license fee agreement or receive a refund of any license fees. If the change made is not required by

generally applicable law, then after Respondus provides written notice to Institution of the change, Institution shall have the right to object to such change, but only on reasonable grounds, and only in writing provided to Respondus, within thirty (30) days after Respondus provides written notice of the change, and if no written objection is provided within those thirty (30) days, the change will not provide a basis for Institution to terminate the separate license fee agreement or receive a refund for any license fees. If Institution does object to the change based on reasonable grounds, by providing written notice of such objection to Respondus within thirty (30) days after Respondus provides written notice of the change, Respondus shall have the right to amend the Terms to delete the change and revert to the prior version of the Terms within sixty (60) days after the notice of objection is provided, in which case, Institution shall have no basis for a termination of the separate license fee agreement or refund of any licenses fees. During those sixty (60) days after Institution provides written notice of objection, Institution shall make reasonable efforts to discuss with Respondus, at Respondus' request, the content of the change to which the Institution objects, so that Respondus may propose a modified change at its discretion and Institution shall provide prompt written notice to Respondus if such modification is acceptable to Institution, which acceptance shall not be unreasonably withheld, in which case, Respondus may modify the acceptable change accordingly within the sixty (60) days, and if such modification is implemented by Respondus within this period, there shall be no basis for Institution to terminate the separate license fee agreement or to collect any refund of any licenses fees. If Respondus does not take steps to delete the changes for which timely and reasonable written notice of objection has been provided by Institution by reverting to the prior version of the Terms or to modify the changes through agreement with the Institution within the sixty (60) day period, then Institution shall have the right to terminate the separate license fee agreement and any paid licenses, by providing written notice of termination to Respondus. In such case of termination, Institution may be entitled to a pro-rated refund for licenses in use after such notice of termination, such refund to be calculated as a pro-rated amount proportional to time remaining on the licenses and their availability are subject to the separate license fee agreement. Respondus reserves the right to terminate the services of Respondus Monitor and to license the Software, at Respondus' discretion, with at least four (4) months advance notice provided to Institution prior to the end of the term of all paid licenses (e.g., license units) that are currently in use at the time such notice is given. However, advance paid licenses that are not in use at the time such advance notice is given, may no longer be used after receipt of the advance notice, but refunds for such unused licenses may be available under the separate license fee agreement.

INDEMNIFICATION DUE TO INFRINGEMENT. Subject to prompt notification by Institution, cooperation by Institution, and control of all litigation and/or settlement by Respondus, Respondus shall indemnify, defend and hold harmless Institution from and against any and all costs and damages assessed against Institution by a judgment that Respondus Monitor infringes upon any third party intellectual property right. Each party agrees to notify the other promptly of any matters in respect to which this indemnification may apply. If notified in writing of any action or claim for which Respondus is to provide indemnity, Respondus shall defend those actions or claims at its own expense and pay the costs and damages awarded against Institution in any such action, or pay any settlement of such action.

WARRANTY REGARDING 3rd PARTY INTELLECTUAL PROPERTY. Respondus warrants and represents that, to the best of its knowledge, at the time these Terms are first accepted by Institution, Respondus Monitor does not infringe any patent, trademark or copyright or misappropriate any trade secret of any third party. If Respondus should later discover that a potential infringement exists, and if Respondus is unable to immediately modify Respondus Monitor to avoid such potential infringement, Respondus shall promptly notify Institution and Institution shall have the independent right to immediately terminate use of Respondus Monitor and to obtain a refund of any advanced paid license fees, unless Respondus Monitor is able to provide a non-infringing alternative within ninety (90) days. Also, in the case such potential infringement is discovered, Respondus shall have the right to immediately terminate Respondus Monitor at its own discretion, in which case, Respondus shall refund all advanced paid license fees.

DISCLAIMERS. The disclaimers in this section are subject to Respondus' promise of Indemnification Due to Infringement, and Respondus' Warranty Regarding 3rd Party Intellectual Property, under the respective sections of those terms above, and no term in this section shall limit Respondus' promises under those terms. Respondus disclaims responsibility or liability for the accuracy, content, completeness, legality, reliability, operability or availability of information or data in the Respondus Monitor Service or Software. Respondus further disclaims any responsibility for the deletion, failure to store, misdelivery, or untimely delivery of any information or data. Respondus disclaims any responsibility for any harm resulting from downloading or accessing any information or data through Respondus Monitor. Institution will bear all risk associated with any information or data Institution accesses. Institution's access or use of any information or data provided by Respondus Monitor or third parties is conditioned on Institution's agreement to these Terms, including these disclaimer provisions.

SUBJECT TO RESPONDUS' WARRANTY REGARDING 3rd PARTY INTELLECTUAL PROPERTY AS SET FORTH ABOVE, RESPONDUS MONITOR IS PROVIDED "AS IS" WITH NO WARRANTIES WHATSOEVER. ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED. TO THE FULLEST EXTENT PERMITTED BY LAW, RESPONDUS DISCLAIMS ANY WARRANTIES FOR THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF RESPONDUS MONITOR. RESPONDUS SIMILARLY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY WARRANTIES FOR ANY INFORMATION OR ADVICE OBTAINED THROUGH RESPONDUS MONITOR.

SUBJECT TO RESPONDUS' WARRANTY REGARDING 3rd PARTY INTELLECTUAL PROPERTY AS SET FORTH ABOVE, INSTITUTION UNDERSTANDS AND AGREES THAT ANY INFORMATION OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF RESPONDUS MONITOR IS OBTAINED AT ITS OWN DISCRETION AND RISK AND THAT INSTITUTION WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO ITS COMPUTER SYSTEM(S) OR LOSS OF DATA THAT MAY RESULT IN THE DOWNLOAD OF SUCH INFORMATION OR DATA. SUBJECT TO RESPONDUS' WARRANTY REGARDING 3rd PARTY INTELLECTUAL PROPERTY AS SET FORTH ABOVE, UNDER NO CIRCUMSTANCES SHALL RESPONDUS BE LIABLE TO INSTITUTION ON ACCOUNT OF ITS USE OR MISUSE OF AND RELIANCE ON RESPONDUS MONITOR. SUCH LIMITATION OF LIABILITY SHALL APPLY TO PREVENT RECOVERY OF DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND PUNITIVE DAMAGES (EVEN IF RESPONDUS HAS BEEN ADVISED OF THE

POSSIBILITY OF SUCH DAMAGES). SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON RESPONDUS MONITOR, FROM INABILITY TO USE THE RESPONDUS MONITOR, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF THE RESPONDUS MONITOR SERVICES OR BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH THE RESPONDUS MONITOR SERVICES. THE FOREGOING DISCLAIMERS, WAIVERS AND LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

INTELLECTUAL PROPERTY. All web design, text, graphics, the selection and arrangement thereof, and all software compilations, underlying source code, software and all other material on Respondus Monitor are either the copyright or trademark of Respondus, or covered by other intellectual property rights of Respondus or a third party licensor of Respondus. Any use of Respondus Monitor beyond the purpose indicated above is strictly prohibited. Institution shall not acquire any rights in Respondus' Intellectual property by using Respondus Monitor.

MISCELLANEOUS. Respondus may terminate Institution's use of Respondus Monitor if Institution breaches or violates these Terms, provided that Respondus allow Institution a period of fifteen (15) days to cure any such breach or violation. Unless otherwise specified in writing, these Terms constitute the entire agreement between the parties with respect to the subject matter contained herein and supersede any other prior agreements between Respondus and Institution regarding Respondus Monitor. If Respondus should fail to enforce any right or provision in these Terms, this failure shall not constitute a waiver of such right or provision or of any other rights or provisions in these Terms. If a court should find that one or more rights or provisions set forth in these Terms are invalid, the parties agree that the remainder of the rights or provisions shall be enforceable and that, to the extent permitted by law, the court shall give effect to the parties' intentions, as reflected in any such rights or provisions that have been declared invalid or unenforceable. If Institution does not agree to these Terms, Institution will not be permitted to use Respondus Monitor. Any term that would naturally survive termination of these Terms shall survive, including, for example, INDEMNIFICATION DUE TO INFRINGEMENT as to Institution's prior use of Respondus Monitor before termination. Any notice required to be given under these Terms shall be deemed effective on the date sent if provided by email and later acknowledged, or if provided by registered or certified mail addressed to an administrator of the Institution or to Respondus, within three (3) days after deposit with the US Postal Service.

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